

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO VILLATORO,
MISael ALEXANDER MARTINEZ CASTRO, ANGEL
MARTINEZ, EDWIN ULLOA MOREIRA and MATEO
UMAÑA individually and on behalf of all others similarly
situated,

**Case No. 21-cv-09014
(PAE)(SDA)**

Plaintiffs,

- against -

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY'S CREW, JOHN
KELLY and JOSEPH PROVENZANO,

Defendants.

DECLARATION OF ALONSO VILLATORO

I, Alonso Villatoro, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I was employed by Kelco Construction, Inc. ("Kelco") from about March 2017 until about January 2021.
2. Kelco and E.L.M. General Construction Corp. ("ELM") perform landscaping and construction work in at worksites New York City.
3. I worked as a laborer and form setter. My responsibilities also included transporting other employees, tools and materials in a company vehicle to and from the worksites.
4. Kelco and ELM share offices at 25 Newton Place, Hauppauge, New York ("the Hauppauge facility).

5. The Hauppauge facility consists of offices, a prefabricated steel warehouse building and storage facility, a yard (for storing mulch, topsoil, and other landscaping and construction materials), shipping containers for storing tools and equipment, large waste containers, and a parking lot.

6. All Kelco employees responsible for transporting employees, tools and materials to the worksite (“drivers”) were expected to report to the Hauppauge facility in the morning. Kelco employees who did not drive reported to a nearby “park and ride” where they waited to be picked up by the drivers.

7. ELM employees (both drivers and worksite laborers) were also required to report to the Hauppauge facility in the morning.

8. When working at a New York City worksite, we usually departed the facility at 4:30 AM with work commencing at the worksite at 6:00 AM. We were all required to be at the Hauppauge facility ten minutes before departure.

9. Upon arriving at the Hauppauge facility, the Kelco and ELM employees would load materials and tools needed on company vehicles. The project manager would tell us what inventory of materials and tools where needed to make sure everything was loaded.

10. Kelco drivers usually left the facility at 4:30 AM. We would drive to the nearby park and ride to pick up other Kelco workers and transport them to the jobsite. At the end of the day, Kelco drivers would transport workers back to Long Island and return the vehicle to the Hauppauge facility. When we arrived at the Hauppauge facility at the end of the day, we would unload the trucks. At the end of the week, on Fridays, upon arriving at the Hauppauge facility, Kelco drivers would clean the inside and outside of the vehicles using soap, water, brushes, and hoses which were provided by Kelco specifically for that purpose.

11. Kelco drivers were not paid from the time we were required to report to the Hauppauge facility until the vehicles were unloaded at the end of the day. Instead, we were only paid from the time we were scheduled to start work at the jobsite (6AM or 7AM) until we left the jobsite to return to the Hauppauge facility. Sometimes Kelco drivers would be paid a “drive time” bonus by ELM of 3 hours at a low rate, usually \$15.00. The drive time pay was not based upon the actual time spent driving, and did not vary from day to day. On some days, the traffic was so heavy leaving Manhattan that the travel time at the end of the day would be 3 hours, in addition to the 1 ½ hour morning travel.

12. The reason why I believe that all of my co-workers were not paid the travel time is that I spoke to other Kelco drivers who complained that we should be getting paid time and a half for hours over 40 from Kelco, rather than being paid a low “drive time” bonus through ELM.

13. Drivers (Eduardo, Noe, Carlos, Evert, Ramon, Eunicer), discussed how all employees were only being paid for the time that we arrived at the jobsite, and not from the time we were required to report at facility until the trucks were unloaded at the end of the day. We would speak to Pablo, the superintendent in charge of the projects we were doing, and he would say that that’s how it is and that is how everyone gets paid and if we didn’t like it we could leave. Nectaly, another project manager, also said said the same thing.

14. I had conversations with Carlos, Aldo, Eduardo, Noe and others. They told me and even showed me some of their paystubs that showed me that they were also getting paid \$15 for driving time and on different checks.

15. Kelco and ELM issued separate paychecks to me for work performed during the same workweek.

16. Kelco and ELM did not combine the hours worked for purposes of paying overtime wages to employees.

17. For example, for the workweek ending September 16, 2017, Kelco paid me for 40 hours at \$45.85 per hour and 3.5 hours at the overtime rate of \$68.775 per hour. However, for this pay period, ELM also paid me for an additional 8 hours at a rate of \$37.50 per hour, and an additional 3 hours at only \$15 per hour.

18. For example, Kelco paid me for 32 hours of regular wages at an hourly rate of \$46.85 for the workweek ending July 27, 2019. During this same workweek, ELM paid for an additional 21 hours at a rate of only \$15.00 per hour.

19. I believe that there were other employees who also were paid by ELM for overtime hours at rates less than 1 ½ times the regular rate of pay. The reason I believe this is because as co workers we would speak and discuss the fact that we were getting checks from two different companies – Kelco and ELM.

20. My primary language is Spanish. On December 21, 2022, this declaration was verbally translated to me into Spanish by Shirley Navarro-Losito.

21. I ask that the Court please authorize notice to my co-workers of the right to join this case.

I declare under penalty of perjury, that the foregoing is true and correct.

Dated: 12/22/2022



Alonso Villatoro

JD ANNE'S SUBDITTYA v Dan Jean Y35

eSignature Details

Signer ID: AmMSEsub9UTYAoDanJEarX35
Signed by: Alonso Villatoro
Sent to email: Alonsov3010@icloud.com
IP Address: 69.127.234.43
Signed at: Dec 22 2022, 2:30 pm EST